Strategies to Reduce Crowding at the Innes Road Jail

Submission to the Ottawa-Carleton Detention Centre Task Force by the Criminalization and Punishment Education Project

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Context

Following recent revelations that showers were being used as overflow units to house prisoners at the Ottawa-Carleton Detention Centre (OCDC), Minister of Community Safety and Correctional Services Yasir Naqvi called a task force to address crowding, as well as to improve living and working conditions at the facility. The issues plaguing OCDC are longstanding, well documented, and also reflect systemic problems observed in other jails and prisons across the province of Ontario, as well as in other parts of Canada.

For over a decade, the remand population – legally innocent prisoners awaiting judicial proceedings – have outnumbered convicted prisoners serving court-mandated sentences in provincial-territorial facilities in Ontario and elsewhere (see Beattie, 2006). On an average day in 2014/15, there were 4,862 remanded versus 2,675 sentenced prisoners in Ontario jails and prisons, each costing $217.92 per day or $79,540.80 per year to incarcerate (Reitano, 2016). At OCDC, it is not uncommon for prisoners on remand to account for 60 to 70 percent of the facility's population. While police-reported victimization rates and the proportion of provincial-territorial prisoners serving sentences declined, the proportion of remanded prisoners tripled in recent decades (Piché, 2014). Recent reports by Justice Canada (Webster, 2015), the Canadian Civil Liberties Association (Deshman and Myers, 2014), the John Howard Society of Ontario (2013), and academic researchers have examined the broken bail system and/or the remand population explosion. These reports and studies highlight the degree to which a culture of risk aversion shared by various penal system actors (i.e. police officers, Crown attorneys, justices of the peace and judges) has led to increases in the use of pre-trial detention (Webster *et al*., 2009) and the imposition of bail conditions that set people up to fail via breaches that serve as a pathway to jail (Deshman and Myers, 2014) locally in Ottawa and elsewhere. While problems associated with bail that have contributed to the remand boom have occurred across Canada, they are most acute in Ontario and the Yukon (Deshman and Myers, 2014).

Extensive court backlogs in Ontario mean that those remanded into custody are warehoused for long periods of time as they wait for their court dates. Some individuals spend lengthy periods of time in jail only to be released upon being found not guilty, or having their charges withdrawn or stayed. Conditions at the OCDC in particular have been controversial for many years, and violate several sections of the United Nations' *Standard Minimum Rules for the Treatment of Prisoners*, as well as section 12 of the *Canadian Charter of Rights and Freedoms,* namely the right to be protected against "cruel and unusual punishment". As has been extensively documented, prisoners routinely experience double to quadruple bunking, insufficient and poor quality food, unsanitary and unsafe conditions, frequent lockdowns, inadequate medical, dental, and psychiatric care, as well as lack of yard time, physical exercise, and voluntary programming. In 2006, the facility's Superintendent at the time, Asfia Sultan, testified in court that prisoners were sleeping in the showers (see *Ministry of Community Safety and Correctional Services and the Ottawa-Carleton Detention Centre v. Wahab Dadshani*). Ten years later, in 2016, this practice

was discovered to still be occurring. The use of solitary confinement cells to warehouse prisoners in OCDC is systemic – this practice occurred 555 times between April and September 2015 alone (Cox 2016). Those who have been placed in segregation at OCDC report to us going days without showering, running out of toilet paper, experiencing frigid temperatures, and having their mattresses removed from early morning until bed time, forcing them to sit on the cold, hard floor.

While certainly more could be said about crowding and troubling conditions at OCDC, this report is about offering solutions. The alternatives proposed in this submission compiled by members of the Criminalization and Punishment Education Project (CPEP) are derived from reports and scholarly findings that are mindful of the well-established fact that incarceration is the most costly and least effective means to address the needs of those impacted by criminalized conflicts and harms, whether they be survivors, perpetrators, and/or concerned members of the community (Mathiesen, 2006). As such, the recommendations are oriented towards reducing the number of prisoners held at OCDC. A second report that CPEP will submit prior to the conclusion of the OCDC Task Force will outline key reforms to improve the day-to-day conditions of those who live and work at the Innes Road jail.

We recognize that some of the recommendations extend to matters out of the jurisdiction of the Ontario Ministry of Community Safety and Correctional Services and instead fall to others, such as the Ontario Ministry of the Attorney General. Even so, it is the responsibility of the Government of Ontario as a whole to bring together all of their ministries and to reach out to the federal government to develop a coordinated response to address the longstanding issues that have contributed to crowding and deplorable conditions at OCDC and other facilities like it in the province.

Strategies to Reduce Crowding at OCDC

In criminological literature, it is well established that imprisonment is inefficient at deterring law-breaking, and fosters institutionalization, rather than promoting positive outcomes in the lives of prisoners (Mathiesen, 2006). It has also been shown that privileging this form of incapacitation fails to keep people safe in the long term, by diverting resources towards imprisonment that could otherwise be spent on additional education, employment, housing, health and mental health supports in communities that are disproportionately affected by victimization that comes to the attention of 'criminal justice' authorities (Clear, 2007). The use of incarceration also punishes the loved ones of prisoners who struggle to maintain relationships, as well as to fill emotional, financial and other voids (Comfort, 2007). Perhaps more importantly, the complex needs of survivors and/or perpetrators of 'crime' are mostly unmet when 'justice' is reduced to the imposition of a prison term (Elliott, 2011).

Recommendation 1.1: To better meet the needs of survivors and accused parties, it is recommended that the Ontario Ministry of Community and Correctional Services and the Ontario Ministry of the Attorney General establish policy directives instructing police officers, Crown attorneys and defense attorneys to inform those noted above of the option to voluntarily participate in community-based restorative (Elliott, 2011) and transformative justice (Morris, 2000) encounters facilitated by organizations like the Collaborative Justice Project in Ottawa. In cases where survivors and accused parties both agree to take part in such a process, 'criminal justice' proceedings would be halted to allow them to come to a mutually agreed upon resolution. Should a resolution be reached and its conditions are satisfied, the legal proceedings could be stayed. However, should a resolution not be reached or its conditions not be satisfied, legal proceedings could recommence at the stage where they were halted.

Recommendation 1.2: If the Government of Ontario supports multiple pathways for restorative and transformative justice to be used as an alternative to the penal process, it is recommended that additional resources be allocated as needed to ensure the viability and success of restorative and transformative justice encounters so that survivors, perpetrators, and their communities of accountability can explore the causes and consequences of harm, as well as how their needs can be met in a manner that promotes security and healing.

While the recommendations noted above are meant to promote alternatives to respond to criminalized conflicts and harms outside of the penal system, those outlined below focus on how to diminish the use of incarceration through targeted reforms to policing and prosecutorial practices, bail and sentencing hearing procedures and outcomes, and the management of custodial sentences in Ontario.

Policing and Prosecution Reforms

Police officers and Crown attorneys play an influential role in decisions concerning bail and remand. When an accused person is first charged and arrested, a decision by police to detain them until bail proceedings, instead of releasing them with a promise to appear in court or other conditions (via recognizance or an undertaking), makes a person more likely to be remanded into custody by a justice of the peace or judge before trial (Webster, 2015). Individuals facing multiple charges are also less likely to obtain bail and their legal ordeals often take a significant time to resolve, taking up considerable court resources that delay the adjudication of other cases (Webster, 2015).

Recommendation 2.1: To respect the presumption of innocence, it is recommended that the Ontario Ministry of Community Safety and Corrections establish policy directives instructing police officers to defer the imposition of conditions of release upon arrest (other than compelling people to attend court hearings) where possible and to require reasons for detention in writing (Webster, 2015, p. 16).

Recommendation 2.2: To prevent individuals from being remanded into custody only to be found not guilty or to have their charges stayed or withdrawn, it is recommended that the Ontario Ministry of the Attorney General establish policy directives instructing Crown attorneys to approve charges before they are laid, as practiced in other Canadian provinces (Tilley, 2012, p. 5). This process could remove charges that are unlikely to result in a finding of guilt from court dockets, freeing up court resources so that other cases can be processed more swiftly, thereby cutting down the lengths of stays in remand centres.

Recommendation 2.3: To avoid the harmful criminalization and incarceration of persons that use 'illicit' drugs and/or experience mental health crises, it is recommended that Government of Ontario "[e]xpand the capacity of pre-charge and post-charge diversion programs" for these populations (JHSO, 2015, p. 26).

Bail Reforms

As evidenced in a number of reports and studies we list, a culture of risk aversion among legal actors that has developed over the past two decades in Ontario and elsewhere has translated into a greater number of individuals being denied bail or having their bail revoked. Such people constitute the majority of prisoners at OCDC. To bring in a culture that respects the presumption of innocence that would translate into significantly fewer remanded prisoners, Webster (2015) has recommended that the federal government enact a new *Bail Reform Act*.

Recommendation 3.1(a): To decrease the number of persons detained before the conclusion of their criminal law proceedings, it is recommended that the Government of Ontario request that the Minister of Justice and Attorney General of Canada enact a new legal framework for bail that would (a) give the police "more discretionary power to release accused persons on their own recognizance" to limit the number of persons who start their judicial ordeals in custody (Webster, 2015, p. 12), (b) release those detained by police at arrest after their "first appearance in bail court" (JHSO, 2013, p. 5), (c) reduce court processing times by mandating that bail be determined "in only 1-2 appearances" for those held in custody prior to their bail decisions (Webster, 2015, p. 12) unless there are compelling reasons to suggest a miscarriage of justice would be the result of not granting an adjournment (Webster, 2015, p. 18), and (d) mandate that a judge or justice of the peace cannot order the detention of "anyone unless the Crown demonstrates a need to do so" (Webster, 2015, p. 13) with respect to primary (court attendance), secondary (public safety) or tertiary (confidence in the penal system) grounds.

Recommendation 3.1(b): Should such bail legislation be enacted by the federal government, it is recommended that the Ontario Ministry of Community Safety and Corrections and the Ontario Ministry of the Attorney General oversee training and the development of policy manuals for

police officers, Crown and duty counsel / defense attorneys, along with judges and justices of the peace, concerning bail decision processing and grounds for detention.

Recognizing that it may take some time for the federal government to enact new bail legislation, there are still avenues available to the Government of Ontario to make short-term policy reforms in this area to reduce the number of remanded prisoners held in OCDC and similar facilities across the province.

Recommendation 3.2(a): To avoid causing significant delays associated with the time it often takes accused parties to locate someone to take on the role of surety, it is recommended that the Ontario Ministry of the Attorney General establish policy directives instructing Crown attorneys to not seek and judges or justices of the peace to not impose sureties unless they are required for compelling court attendance (Webster, 2015, p. 18). Research indicates sureties are required in over 50 percent of cases where individuals are released into the community on bail, despite a lack of evidence that the presence of a surety increases the likelihood of compliance with bail conditions (Deshman and Myers, 2014),

Recommendation 3.2(b): To avoid setting up many people on bail to fail (i.e. violate their conditions), it is recommended that the Ontario Ministry of the Attorney General establish policy directives instructing Crown attorneys to not seek and judges or justices of the peace to not impose multiple bail conditions "unless they can plausibly be related directly to the goals of ensuring the accused person's attendance in court or that he/she does not commit another [sic] serious offence while in the community" (Webster, 2015, p. 17).

Recommendation 3.2(c): To respect the presumption of innocence, it is recommended that the Ontario Ministry of the Attorney General establish policy directives instructing judges and justices of the peace to release the accused "on an undertaking without conditions" in cases where "the Crown does not provide evidence that an accused must be detained or that specific conditions of release must be imposed on an accused" (Webster, 2015, p. 18).

Recommendation 3.2(d): To respect the presumption of innocence, it is also recommended that the Ontario Ministry of the Attorney General establish policy directives instructing judges and justices of the peace in reverse-onus cases to release the accused "on an undertaking without conditions" in cases where "the accused demonstrates that there is no need for detention…, unless the Crown shows cause as to why a more onerous form of release is required" (Webster, 2015, p. 19)

Recommendation 3.2(e): To decrease the use of custody in provincial jails and prisons, it is recommended that the Ontario Ministry of the Attorney General establish policy directives instructing Crown attorneys to seek and judges or justices of the peace to consider placements in

bail supervision programs for those that would otherwise be detained while awaiting trial in provincial jails and prisons. As noted by the John Howard Society of Ontario (2013, p. 8), such bail initiatives "should not replace accused persons' right to reasonable and the least onerous form of release", but rather be used for those "who would face probable detention (surety or not) but who are not necessarily a high-risk individual". Otherwise, the expansion of bail supervision would widen "the justice supervision net to capture more low-risk individuals" in a way that "will only increase government costs" (JHSO, 2013, p. 8) and not decrease the number of remanded prisoners in facilities like OCDC.

Recommendation 3.2(f): Should the Ontario Ministry of the Attorney General explicitly promote the use of bail supervision programs in place of remand, it is recommended that the Ontario Ministry of Community and Correctional Services allocate resources to build more capacity for bail supervision amongst non-profit organizations.

Recommendation 3.2(g): To avoid the criminalization of bail breaches and limit the incarceration of those who violate their bail terms, it is recommended that the Ontario Ministry of Community and Correctional Services and the Ontario Ministry of the Attorney General establish policy directives instructing police officers and Crown attorneys to not pursue charges for breach of bail conditions, while instructing judges and justices of the peace to re-release persons with the same or different bail conditions (Webster, 2015, p. 17) in cases where the conduct in question is not associated with court attendance or a significant threat to public safety.

Recommendation 3.2(h): In keeping with the Truth and Reconciliation Commission of Canada's (2015, p. 3) "call upon the federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade", it is recommended that the Ontario Ministry of the Attorney General explore ways that courts could "incorporate Gladue considerations into the bail process" to address "the systemic barriers Aboriginal people face in the process of arrest and judicial interim release, and properly consider these in the determination of release" (Deshman and Myers, 2014, p. 79). The results of such efforts ought to be noted in "annual reports that monitor and evaluate progress in doing so" (TRCC, 2015, p. 3).

Recommendation 3.2(i): In cases where the number of prisoners surpasses institutional capacity, it is recommended that the Ontario Ministry of Community and Correctional Services establish a capping policy under R.R.O. 1990, Reg. 778, s. 38 (1) that would allow for the "use [of] the remand population as a safety valve" (Webster, 2015, p. 16) through the extension of temporary absences authorized by the Superintendent of the facility, currently only available to prisoners serving a prison term, to legally innocent prisoners in remand centres.

Sentencing Reforms

Reducing crowding in provincial jails and prisons like OCDC will also require legislative changes by the federal government, which is responsible for making amendments to the *Criminal Code of Canada* with regards to offences and related sentences.

Recommendation 4.1(a): To expand the number of offences where sentencing judges have the discretion to impose "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders" under section 718.2(e) of the *Criminal Code of Canada*, it is recommended that the Government of Ontario request that the Minister of Justice and Attorney General of Canada review all mandatory minimum sentences and, at the very least, repeal those enacted from 2006 to 2015.

Recommendation 4.1(b): Following the Truth and Reconciliation Commission of Canada's (2015, p. 3) "call upon the federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade", it is recommended that the Ontario Ministry of Community and Correctional Services and the Ontario Ministry of the Attorney General "provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending".

Recommendation 4.2: To expand the ability of sentencing judges to impose a conditional sentence for offences that would otherwise carry a prison term of two-years-minus-a-day, it is recommended that the Government of Ontario request that the Minister of Justice and Attorney General of Canada reinstate all conditional sentences that were abolished from 2006 to 2015, while also exploring whether conditional sentences could be imposed for additional offences.

Recommendation 4.3: To ensure that what is criminalized and related penalties in Canada reflect the values of its citizens, it is recommended that the Government of Ontario request that the Minister of Justice and Attorney General of Canada launch an exhaustive review of the *Criminal Code of Canada* to identify acts that ought to be decriminalized or legalized through other regimes of governance in keeping with evolving societal standards (e.g. addressing 'illicit' drug use through a public health model).

Post-Sentencing Reforms

Once a judge has imposed a custodial term and an individual has been admitted to OCDC to serve their sentence, there are a number of tools that could be used to alleviate facility crowding in a sustainable way that would also promote the timely and safe re-entry of prisoners into the community.

Recommendation 5.1(a): To enhance prisoner access to education, training, employment, volunteer and other opportunities outside prison walls that would, along with contact with loved ones that promote their personal well-being and, by extension, that of their community, it is recommended that OCDC's Superintendent expand the authorization of temporary absences up to 72 hours (R.R.O. 1990, Reg. 778, s. 37 (2)(a)) for prisoners who apply for them, especially in the case of individuals scheduled to serve intermittent sentences on the weekend who live safely among us during the week.

Recommendation 5.1(b): To this end, it is also recommended that OCDC's Superintendent assess on an on-going basis whom among the prisoners serving sentences in the facility could benefit from gradual release through temporary absences beyond the 72-hour mark with or without conditions and community-based supports relevant to their individual circumstances where needed and, from there, assist prisoners with the completion and submission of applications that will be referred by the Superintendent to the Chair of the Ontario Parole Board for adjudication (R.R.O. 1990, Reg. 778, s. 38 (1)).

Recommendation 5.1(c): To expand re-entry opportunities, it is recommended that R.R.O. 1990, Reg. 778, s. 38 (1) be amended to give the Superintendent of the institution in which a prisoner is confined the ability to authorize temporary absences of up to 7 days at a time, with requests surpassing this period to be referred to the Chair of the Ontario Parole Board.

Recommendation 5.2(a): To expand re-entry opportunities, it is also recommended that provisions be added to Part II of R.R.O 1990, Reg. 778 that would mandate (a) the presumptive release of first-time prisoners convicted of non-violent offences at one-sixth of their sentence via accelerated parole and (b) the presumptive release of all prisoners at two-thirds of their sentences (statutory release) unless (c) a Superintendent of the institution in which a prisoner is confined files a motion against such a release citing an immediate danger to public safety that can be contested by the affected party in a hearing with Ontario Parole Board who will rule on the motion.

Recommendation 5.2(b): To prevent prisoner injuries or deaths stemming from known health and mental health conditions, it is also recommended that provisions be added to Part II of R.R.O 1990, Reg. 778, s. 41 (2) that would allow for compassionate releases with or without conditions, thus enabling prisoners to obtain care in community-based settings in a timely manner, including in cases where their conditions could impact the lives of others (e.g. preventing complications associated with pregnancy, preventing the spread of communicable diseases, etc.).

Recommendation 5.2(c): To reduce the prospect of imprisonment related to parole condition breaches, it is recommended that the Government of Ontario amend R.R.O 1990, Reg. 778, s. 48

to instruct the Ontario Parole Board to limit the imposition of release conditions to those that can be demonstrably linked to assisting the safe re-entry of prisoners into the community.

Setting Goals and Delivering Results

With sustained public attention in the media, the presence of many engaged community members and groups, and the political will to make a difference, there is now an opportunity to put in place additional pathways to divert residents of Ottawa and surrounding areas away from incarceration in a manner that will result in better living and working conditions at OCDC that cannot be missed. The time for band-aid solutions, including the mass transfer of prisoners from the Innes Road jail to other facilities that took place shortly after the OCDC task force was launched, has long-passed, and such approaches are unacceptable.

If Minister Naqvi wants his time in 'corrections' to be remembered for the "transformation" Premier Kathleen Wynne tasked him with in his September 2014 mandate letter and not the perpetuation of the status quo, the recommendations and action plan outlined by the OCDC Task Force need to be released at the earliest available opportunity to allow others to assess whether the proposals will meaningfully reduce the population and improve conditions at the Innes Road jail in a timely manner.

For our part, CPEP will assess the goals and results of the Task Force as part of our regular meetings on a go-forward basis, reaching-out to Minister Naqvi and OCDC officials to inform them of progress on the ground and barriers to change we learn about through our contact with prisoners, staff, and volunteers at the facility. We will also continue our public interventions, including organizing public forums, so that the issues at OCDC remain top of mind for affected residents and the provincial government.

In closing, we would like to thank Minister Naqvi for initiating this process and the OCDC Task Force members for considering our recommendations that, if implemented, would set a path for less costly and more effective ways of dealing with the conflicts and harms we as a society call 'crime'.

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About CPEP and the Authors

The *Criminalization and Punishment Education Project* (CPEP) is a collective that brings researchers and students at Carleton University and the University of Ottawa together with those affected by criminalization and punishment to develop collaborative research projects and carry-out related public education initiatives. Since its founding in 2012, the group has led a campaign to reduce crowding and improve conditions at the Ottawa-Carleton Detention Centre, which has included documenting problems at the jail, writing op-eds and commenting on news stories, organizing public forums, and producing short documentaries.

Aaron Doyle, PhD is an Associate Professor in the Department of Sociology and Anthropology at Carleton University. He has been documenting issues at the Ottawa-Carleton Detention Centre for over a decade.

Laura McKendy is a PhD candidate in the Department of Sociology and Anthropology at Carleton University. Her doctoral research funded by the Social Sciences and Humanities Research Council of Canada examines the experiences of incarceration at the Ottawa-Carleton Detention Centre.

Justin Piché, PhD is an Associate Professor in the Department of Criminology at the University of Ottawa who studies Canadian prison trends and alternatives to incarceration. In October 2012, Piché was awarded the Aurora Prize from the Social Sciences and Humanities Research Council of Canada for "excellence, creativity and originality in research and a deep commitment to sharing knowledge that enriches Canada's intellectual and cultural life".